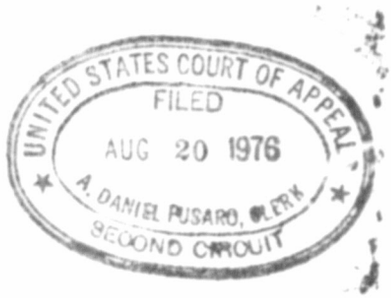
United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF



75-7682

United States Court of Appeals

FOR THE SECOND CIRCUIT

ROBERT CALHOUN, JR.,

Plaintiff-Appellant,

against

H. SPENCER KUPPERMAN ESQ., CRAVATH, SWAINE & MOORE, its agents and others; THACHER PROFFITT, PRIZER, CRAWLEY & WOOD, its agents and others; SKADDEN, ARPS, SLATE, MEAGHER & FLOM, its agents, Michael H. Diamond, Henry P. Baer, J. Phillip Adams, Peggy L. Kerr, and others; and FREEMAN, MEADE, WASSERMAN & SHAREMAN, its agents and others,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (DUFFY, J.)

BRIEF FOR DEFENDANT-APPELLEE SKADDEN, ARPS, SLATE, MEAGHER & FLOM

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
Defendant-Appellee Pro Se
Office and P.O. Address:
919 Third Avenue
New York, New York 10022
Tel. (212) 371-6000

Of Counsel
William P. Frank
Robert E. Zimet

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-7682

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:

ROBERT CALHOUN, JR., :

Plaintiff-Appellant, :

-against- :

H. SPENCER KUPPERMAN ESQ., CRAVATH, SWAINE :
& MOORE, its agents and others; THACHER, :
PROFFITT, PRIZER, CRAWLE & WOOD, its :
agents and others; SKADDE , ARPS, SLATE, :
MEAGHER & FLOM, its agents, Michael H. :
Diamond, Henry P. Baer, J. Phillip Adams, :
Peggy L. Kerr, and others; and FREEMAN, :
MEADE, WASSERMAN & SHARFMAN, its agents :
and others,

Defendants-Appellees. :

- x

On Appeal from the United States
District Court for the Southern
District of New York (Duffy, J.)

BRIEF FOR DEFENDANT-APPELLEE
SKADDEN, ARPS, SLATE, MEAGHER & FLOM

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STATEMENT OF THE ISSUES

Whether the pro se Plaintiff's complaint was properly subject to dismissal pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) on the grounds of: (a) the Plaintiff's lack of standing to complain of any injury to the civil rights of his wife; (b) the absence of any predicate for federal jurisdiction; or (c) the failure of the Complaint to state a cause of action as it does not afford defendants fair notice of what the plaintiff's claim is and the grounds upon which it rests.

STATEMENT OF THE CASE

Preliminary Statement

Plaintiff-Appellant Robert Calhoun, Jr. ("Mr. Calhoun") appeals from an Opinion and Order of the Honorable Kevin T. Duffy entered November 18, 1975 which dismissed Mr. Calhoun's Complaint for failure to state a claim upon which relief could be granted.*

The Complaint was filed in the Southern District on July 31, 1975 and the action was assigned to Judge Duffy, who, after a hearing in chambers on September 17, 1975, granted the motions, joined in by all defendants, seeking dismissal of the Complaint. That Order mooted

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* A copy of Judge Duffy's Opinion and Order is annexed hereto as Addendum A.

Mr. Calhoun's applications for summary judgment and certain other relief which had been filed in the interim.

Statement of Facts

The facts relevant to the issue presented for review all appear in the pleadings heretofore had herein and in Judge Duffy's Order.

A. The Parties

Plaintiff-appellant in this action is Mr. Calhoun, the husband of Alice M. Calhoun. Mrs. Calhoun had been the plaintiff in a civil rights action brought in the Southern District entitled Alice M. Calhoun v. Riverside Research Institute, (S.D.N.Y. 71 Civ. 2734)* to which Mr. Calhoun was not a party. The Defendants-Appellees are, except for Skadden, Arps, Slate, Meagher & Flom ("Skadden Arps"), the attorneys who represented Mrs. Calhoun and the several defendants at various stages of that litigation. Skadden Arps is involved in this action apparently because several of its associate attorneys (named in the caption but not served with the Complaint)

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* Mr. Calhoun sought to prosecute an appeal from an Order of Judge Knapp in his wife's case. This Court dismissed Mr. Calhoun's appeal for want of jurisdiction on September 19, 1975 (Case No. 75-7415). The Supreme Court denied Mr. Calhoun's petition for a writ of certiorari on March 8, 1976 (Case No. 75-1022).

had undertaken to represent Mrs. Calhoun in substitution for her earlier counsel on a pro bono basis.

B. The Complaint

1. Jurisdictional Allegations

The Complaint purports to predicate federal jurisdiction on (1) the Civil Rights Act of 1964; (2) 42 U.S.C. § 1983; (3) 18 U.S.C. §§ 241-42; and (4) the decision in Greenwood v. Peacock, 384 U.S. 808 (1966). (Complaint, first paragraph.) It is Skadden Arps' contention that neither the statutes nor the decision relied upon by Mr. Calhoun supply a basis for a federal court's jurisdiction of the subject matter, since the Complaint fails to state a claim upon which relief may be granted under the referenced legislation and decision.

2. Substantive Allegations

The gravamen of the vague and obscure Complaint (the plaintiff appears pro se) is set forth in the following allegations:

> The plaintiff claims that the defendants did conspire together in the litigation of a Civil Rights action (71 CIV 2734 Alice M. Calhoun vs Riverside Research Institute and Columbia University) to do harm to him and his wife. The defendants are charged with carrying out a conspiracy that caused his wife to lose the damages that were warranted in her action. Complaint, ¶ II.

The court below took judicial notice of its own proceedings in the Alice M. Calnoun case which was ultimately settled with the active participation and under the supervision of Judge Whitman Knapp.* It now appears that despite the eminent fairness of the judicially supervised settlement of Mrs. Calhoun's case, Mr. Calhoun (not Mrs. Calhoun) now seeks by his Complaint to charge all counsel involved in his wife's case with being part of some unspecified cabal to cause Mrs. Calhoun (not Mr. Calhoun) to "lose the damages that were warranted in her action."

ARGUMENT

I. PLAINTIFF CALHOUN HAS NO STANDING UNDER THE CIVIL RIGHTS STATUTES RELIED UPON TO OBJECT TO THE LEGAL REPRESENTATION AFFORDED MRS. CALHOUN BY SKADDEN ARPS.

Skadden Arps ha no attorney-client relationship whatever with the plaintiff. Whatever contacts it may have had with him, if any, were strictly incidental

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* Judge Knapp's supervision of and involvement in the settlement process was noted by the Court below in its Opinion and Order, and a transcript of the proceedings wherein the Alice M. Calhoun case was settled is annexed as Appendix A to the Memorandum of Law on Behalf of Defendant Skadden, Arps, Slate, Meagher & Flom in Support of Motion to Dismiss the Complaint.

to legal representation of his wife, and Mrs. Calhoun's action in no way involved his civil rights. Although it is difficult to judge from the Complaint precisely what conduct of Skadden Arps is complained of, it is clear that only Mrs. Calhoun has a cause of action, if any, for the violation of her civil rights arising from alleged malpractice or other malfeasance in the conduct of her civil rights suit.

Assuming, arguendo, that the plaintiff's claims were at once comprehensible and cognizable in federal court, the statutory predicates for subject matter jurisdiction having been met, only Mrs. Calhoun would have standing to raise objections to the legal services rendered to her. The principle is well established, particularly in civil rights cases, that absent extraordinarily compelling circumstances, only the party aggrieved may complain of the impingement of his constitutional rights.

As Chief Justice Warren stated in McGowan v. Maryland, 366 U.S. 420 (1961):

> Since the general rule is that "a litigant may only assert his own constitutional rights or immunities," United States v. Raines, 362 U.S. 17, 22, 4 L. Ed. 2d 524, 529, 80 S. Ct. 519, we hold that appellants have no standing to raise this contention. Tileston v. Ullman, 318 U.S. 44, 46, 87 L.Ed. 603, 604, 63 S. Ct 493. 366 U.S. at 429 (footnote omitted).

This requirement was reiterated in Warth v. Seldin, 422 U.S. 490 (1975), where the Supreme Court stated:

> [E]ven when the plaintiff has alleged injury sufficient to meet the "case or controversy" requirement this Court has held that the plaintiff generally must assert his own legal rights and interests and cannot test his claim to relief on the legal rights or interests of third parties. 422 U.S. at 499 (citations omitted).

In affirming the lower court's dismissal of a complaint challenging the constitutional validity of zoning ordinances, Justice Powell observed that:

> [T]he only basis of the taxpayer-petitioners' claim is that Penfield's zoning ordinance and practices violate the constitutional and statutory rights of third parties . . . . In short the claim of these petitioners falls squarely within the prudential standing rule that normally bars litigants from asserting the rights or legal interests of others in order to obtain relief from injury to themselves. 422 U.S. at 509.

In keeping with the rule enunciated by the Supreme Court, the court below dismissed Mr. Calhoun's complaint, stating that:

> It is the general rule that an individual cannot sue for the deprivation of another's civil rights. McGowan v. Maryland, 366 U.S. 420, 429 (1961); Evain v. Conlisk, 364 F. Supp. 1188 (N.D. Ill.), aff'd, 49 F.2d 1403 (7th Cir. 1974). Only Mrs. Calhoun is in a position to raise any wrongs done to her. The statement that Mr. Calhoun was in turn harmed does not cure this defect.*

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* As observed by the court below, the claim that one has been personally harmed by the deprivation of another's

(Footnote continued)

The District Court's view is one that has been applied by other courts, both within and without this Circuit, which have consistently rejected the notion that one may base his own standing on the claim that the rights of another have been violated. For example, in O'Malley v. Brierley, 477 F.2d 785 (3d Cir. 1973), the court stated that:

> "[A] litigant may only assert his own constitutional rights or immunities," United States v. Raines, 362 U.S. 17, 22, 80 S. Ct. 519, 523, 4 L. Ed. 2d 524 (1960); McGowan v. Maryland, 366 U.S. 420, 429, 81 S. Ct. 1101,

(Footnote continued)

rights is insufficient to confer standing under the civil rights statutes. Accord, Curtis v. Peerless Insurance Co., 299 F. Supp. 429, 430 (D. Minn. 1969) (wife suing for emotional and financial injuries resulting from deprivation of husband's rights). Additonally, courts have also stated that claims of physical, emotional, or financial injury to the litigant, resulting from the deprivation of the rights of another, are not actionable under the civil rights statutes. In Evain v. Conlisk, 364 F. Supp. 1188 (N.D. Ill. 1973), aff'd mem., 498 F.2d 1403 (7th Cir. 1974), the court stated:

> The plaintiff argues that the injury caused by the death of her father as manifested in her deprivation of care, love, association, and financial support is sufficient to constitute a protectible right under the Civil Rights Act. The allegation, however, must fail, for it does not establish a violation or deprivation of a right secured by the Constitution or laws of the United States. 364 F. Supp. at 1191.

6 L. Ed. 2d 393 (1961), and . . . "one cannot sue for the deprivation of another's civil rights." C. Antieau, Federal Civil Rights Acts, Civil Practice, § 31 at 50-51. 477 F.2d at 789 (footnote omitted).

Similarly, in Evain v. Conlisk, 364 F. Supp. 1188 (N.D. Ill. 1973), aff'd mem., 498 F.2d 1403 (7th Cir. 1974), cited by Judge Duffy below, the court stated:

> It is quite apparent in Civil Rights litigation that one individual cannot sue for the deprivation of another's civil rights. As the court stated in Mosher v. Beirne, 237 F. Supp. 684 at 687 (E.D. Mo. 1964):
>
> > ". . . . Plaintiff's allegations in his complaint are not such as create a valid cause of action in him. The effect of those paragraphs is that plaintiff is seeking on his own motion to correct wrongs allegedly done to others, but it is elementary in civil rights litigation that one cannot sue over the deprivation of another's civil rights. McCabe v. Atchison, T. & S.F. Ry. Co., 235 U.S. 151, 35 S. Ct. 69, 59 L. Ed. 169; State of Mo. ex rel. Gaines v. Canada, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208; Brown v. Board of Trustees of LaGrange Independent School Dist., et al., 5th Cir., 187 F.2d 20." 364 F. Supp. at 1190-91.

Accord, Coxson v. Godwin, 405 F. Supp. 1099 (W.D. Va. 1975); Javits v. Stevens, 382 F. Supp. 131, 135 (S.D.N.Y. 1974); Curtis v. Peerless Insurance Co., 299 F. Supp. 429, 434 (D. Minn. 1969).

II. PLAINTIFF CALHOUN'S COMPLAINT FAILS TO STATE A CLAIM OVER WHICH A FEDERAL COURT HAS SUBJECT MATTER JURISDICTION

Each of the predicates of federal jurisdiction relied upon by Mr. Calhoun fails to provide a federal court with jurisdiction over the Complaint.

A. The Civil Rights Act of 1964 Does Not Provide Subject Matter Jurisdiction

The Civil Rights Act of 1964, 42 U.S.C. §§ 1971, 1975(a) - 1975(d) and 2000(a) - 2000(h).* supplies no basis for subject matter jurisdiction. That statute deals with such matters as voting rights, discrimination in places of public accommodation, public facilities and public education, non-discrimination in federally assisted programs, equal employment opportunity, the compilation of registration and voting statistics, intervention and procedures after removal in civil rights cases, the establishment of community relations services, and certain other miscellaneous matters. The Act also provides for a Commission on Civil Rights empowered, among other things, to investigate violations of the statute. There is nothing in the Civil Rights Act of 1964 which even

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* The texts of this and other statutes referred to are annexed to this memorandum as Addendum B.

remotely conferred jurisdiction upon the court below over this action in which the plaintiff seeks to recover vicariously for damages allegedly suffered by him as a result of a claimed conspiracy to violate the civil rights of his wife in the mishandling of her civil rights suit.

B. 42 U.S.C. § 1983 Does Not Provide Subject Matter Jurisdiction

1. The Complaint Fails to Make the Indispensable Allegation That Defendants Acted Under Color of State Law

One of the essential elements of a prima facie case under 42 U.S.C. § 1983 is a showing that the plaintiff was deprived of a right secured to him under the Constitution and laws of the United States by a defendant acting under "color of any statute, ordinance, regulation, custom, or usage of any State or Territory." In short, plaintiff must show that he was injured by a defendant acting under color of state law. Adickes v. Kress & Co., 398 U.S. 144, 150 (1970). As stated by Justice Harlan in that case:

> The terms of § 1983 make plain two elements that are necessary for recovery. First, the plaintiff must prove that the defendant has deprived him of a right secured by the "Constitution and laws" of the United States. Second, the plaintiff must show that the defendant deprived him of this constitutional right "under color of any statute, ordinance, regulation,

> custom, or usage, of any State or Territory." This second element requires that the plaintiff show that the defendant acted "under color of law." 398 U.S. at 150 (footnote omitted).

As the United States District Court for the Southern District of New York said, in applying Adickes, where the defendant is not a state official but merely a private person, as are the members of Skadden Arps:

> [I]t is necessary to show: 1) that the private person conspired with state officials, or 2) sufficient state action to prove a violation of plaintiffs' Fourteenth Amendment rights, i.e., either state compulsion or sufficient state involvement. Mullarkey v. Borglum, 323 F. Supp. 1218, 1224 (S.D.N.Y. 1970) (citation omitted).

This court, in Lefcourt v. Legal Aid Society, 445 F.2d 1150 (2d Cir. 1971), made it abundantly clear that a claim such as plaintiff's must fail if there is not a sufficient showing that claimant has been denied any federal right under color of state law. Such a finding, held the court, is prerequisite for relief under § 1983, and where § 1983 is a claimant's only possible substantive basis for relief, the defect is jurisdictional in nature. 445 F.2d at 1153-54.

Indeed, the requirement to allege action taken under state law is so stringent that where the complained of action was taken under color of federal law, plain-

tiffs are not entitled to assert their claim under § 1983. Weise v. Syracuse University, 522 F.2d 397, 404 (2d Cir. 1975) ("§ 1983 and its jurisdictional counterpart, 28 U.S.C. § 1343(3), have no applicability to federal action."); Smith v. United States Civil Service Commission, 520 F.2d 731, 733 (7th Cir. 1975); Ackerman v. Columbia Broadcasting System, 301 F. Supp. 628, 632-33 (S.D.N.Y. 1969). In light of plaintiff's assertion that defendants' supposed conspiracy was carried out "under color of the United States District Court at Foley Square," (Complaint ¶ III) it is clear that the necessary element of action taken under color of state law does not exist.

2. Section 1983 May Not Be Invoked to Prosecute Actions Against Attorneys for Alleged Malpractice, Even in Their Handling of Civil Rights Actions.

Even assuming that Skadden Arps in fact served as counsel to plaintiff's wife in her action in the United States District Court for the Southern District of New York, no action under color of state law may be implied by the pendency of a federal proceeding (see Weise v. Syracuse University, supra) and the fact that Skadden Arps is a firm of attorneys does not render its members or associates state officials or instrumentalities of the state for purposes of this statute.

In Stambler v. Dillon, 302 F. Supp. 1250 (S.D.N.Y. 1969), Judge Herlands stated that "it is well established that attorneys are not state officers, but private persons, for the purposes of the Civil Rights Act." 203 F. Supp. at 1255. It should be noted that Stambler was decided in the context of a plaintiff complaining of his treatment in certain actions pending in the state court of New York. If attorneys, by virtue of their involvement with state court proceedings, do not act for § 1983 purposes as state officials, a fortiori no state action is involved where the attorneys are participants in a federal proceeding.

A similar result was reached in Fine v. City of New York, 529 F.2d 70 (2d Cir. 1975), where the court held that attorneys acting in their private capacities are not acting under color of state law within the meaning of § 1983. 529 F.2d at 74. See also Jemzura v. Belden, 281 F. Supp. 200 (N.D.N.Y. 1968). This principle of law, which serves to defeat any claim which plaintiff may have against Skadden Arps under § 1983, is one that has been applied repeatedly by courts which are united in the view that § 1983 was never intended as a vehicle for prosecuting malpractice actions against either court-appointed or privately retained attorneys. See Dotlich v. Kane, 497 F.2d

390 (8th Cir. 1974); Glasspoole v. Albertson, 491 F.2d 1090 (8th Cir. 1974); Hill v. McClellan, 490 F.2d 859 (5th Cir. 1974); Page v. Sharp, 487 F.2d 567 (1st Cir. 1973); Szijarto v. Legeman, 466 F.2d 864 (9th Cir. 1972); Nelson v. Stratton, 469 F.2d 1155 (5th Cir. 1972), cert. denied, 410 U.S. 957 (1973); Steward v. Meeker, 459 F.2d 669 (3d. Cir. 1972); O'Brien v. Colbath, 465 F.2d 358 (5th Cir. 1972); Smith v. Clapp, 436 F.2d 590 (3d Cir. 1970); and Palermo v. Rockefeller, 323 F. Supp. 478 (S.D.N.Y. 1971).

C. 18 U.S.C. §§ 241 and 242 Do Not Provide Subject Matter Jurisdiction

Plaintiff has also sought to predicate jurisdiction on certain criminal conspiracy statutes, 18 U.S.C. §§ 241 and 242. But it has been uniformly held that, in accordance with their plain language, these statutes create only criminal liability and provide no civil remedies for their violation. See United States ex rel. Savage v. Arnold, 403 F. Supp. 172 (E.D. Pa. 1975) (treating 18 U.S.C. §§ 241 and 242); Conklin v. Barfield, 334 F. Supp. 475 (W.D. Mo. 1971) (18 U.S.C. §§ 241 and 242); United States ex rel. Pope v. Hendricks, 326 F. Supp. 699 (E.D. Pa. 1971) (18 U.S.C. § 242); United States ex rel. Verde v. Case, 326 F. Supp. 701 (E.D. Pa. 1971) (18 U.S.C. § 241); Spotted Eagle v. Blackfeet Tribe of the Blackfeet Indian

Reservation, 301 F. Supp. 85 (D. Mont. 1969) (18 U.S.C. §§ 241 and 242; Brzozowski v. Randall, 281 F. Supp. 306 (E.D. Pa. 1968) (18 U.S.C. §§ 241 and 242); Sinchak v. Parente, 262 F. Supp. 79 (W.D. Pa. 1966) (18 U.S.C. §§ 241 and 242); and Copley v. Sweet, 133 F. Supp. 502 (W.D. Mich. 1955), aff'd, 234 F.2d 660 (6th Cir.), cert. denied, 352 U.S. 887 (1956) (18 U.S.C. §§ 241 and 242).

D. Greenwood v. Peacock Does Not Suggest a Basis For Subject Matter Jurisdiction

Greenwood v. Peacock, 384 U.S. 808 (1966), suggested by the plaintiff as a grounds for jurisdiction, is, as are the other bases of jurisdiction offered by the plaintiff, inappropriate.

The relevance of Greenwood to any state of facts related to this case is indiscernable. Greenwood involved the unsuccessful attempt by two groups of defendants to effect a removal of pending criminal actions in Mississippi state courts to a United States District Court pursuant to 28 U.S.C. §§ 1443(1) and 1443(2).

III. THE COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION AS IT FAILS TO AFFORD DEFENDANTS' FAIR NOTICE OF THE GRAVAMEN OF PLAINTIFF'S CASE.

Fed. R. Civ. P. 8(a)(2) provides inter alia:

> A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third party claim, shall contain . . . a short and plain statement of the claim showing that the pleader is entitled relief. . . .

Plaintiff has failed to meet this burden. The Supreme Court in Conley v. Gibson, 355 U.S. 41 (1957) emphasized that the Federal Rules of Civil Procedure require that the complainant give the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests." 355 U.S. at 47. Thus Rule 8 contemplated inclusion in a complaint of a "statement of circumstances, occurrences and events in support of the claim presented. . . ." C. Wright Law of Federal Courts, 287 (1970). Indeed, the Advisory Committee on Civil Rules in its 1955 report in response to criticisms of Rule 8(a)(2) based on the view that the Rule does not require the averment of any information as to what has actually happened stated:

> That Rule 8(a) envisages the statement of circumstances, occurrences, and events in support of the claim presented is clearly indicated not only by the forms appended to the rules showing what should be considered as sufficient compliance with the rule, but also by other intermeshing rules; see, inter alia, Rules 8(c) and (e), 9(b)-(g), 10(b), 12(b)(6), 12(h), 15(c), 20, and 54(b). Rule 12(e), providing for a motion for a more definite statement, also shows that the complaint must disclose information with sufficient definiteness. . . . The decision in Dioguardi v. Durning, 139 F.2d 774 (2d Cir. 1944), to which proponents of an amendment to Rule

> 8(a) have especially referred, was not based on any holding that a pleader is not required to supply information disclosing a ground for relief. The complaint in that case stated a plethora of facts and the court so construed them as to sustain the validity of the pleading. 5 C. Wright & A. Miller, Federal Practice and Procedure, § 1201, n. 11 (1969) (emphasis added) (quoting Note to 8(a), Advisory Committee Report of October 1955).

Given then the need under the federal rules for a plaintiff to interject into his complaint sufficient information to disclose circumstances, events and occurrences which, if true would under some legal theory consititute a cognizable claim, analysis of plaintiff's pleading clearly demonstrates that this not too onerous burden has not been met. The only portion of Mr. Calhoun's Complaint which begins to describe the conduct of defendants complained of is the following passage:

> The plaintiff claims that the defendants did conspire together in the litigation of a Civil Rights action (Alice M. Calhoun v. Riverside Research Institute and Columbia University), (71 CIV 2734) to do harm to him and his wife. The defendants are charged with carrying out a conspiracy that caused his wife to lose the damages that were warrant in her action. Complaint ¶ 2.

All else in the Complaint (other than the purported allegation of jurisdiction) either recounts how plaintiff has been supposedly damaged, rails against defendants, or contains Mr. Calhoun's various demands for relief.

The case law in this and other circuits is clear that in the particular context of complaints sounding in violations of civil and constitutional rights, particularly where allegations of conspiracy are involved, there is a special need to allege facts far more specific and less conclusory than the naked, unsupported allegation of Mr. Calhoun recited above.*

Such was the holding articulated by this Court in Powell v. Workmen's Compensation Board of the State of New York, 327 F.2d 131 (2d Cir. 1964):

> A complaint in a case like this must set forth facts showing some intentional and purposeful deprivation of constitutional rights. . . .

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* The observations of Professor Moore in this context are particularly pertinent:

> As they do to pleadings in other civil actions, the general principles of "notice pleading" under Rule 8 apply to pleadings averring conspiracy. However, while Rule 8 demands only a "short and plain statement of the claim showing that the pleader is entitled to relief," in a pleading of conspiracy it is important that within the pleader's ability to do so, and without going into unnecessary detail, the opposing party be informed of the nature of the conspiracy charged, to which he may adequately plead.
>
> It is not enough merely to state that a conspiracy has taken place. Where possible, there should be some details of time and place and the alleged effect of the conspiracy. This is not to say that the pleader must plead his evidence; further details may be secured by means of discovery, and related devices. 2A J. Moore, Moore's Federal Practice, ¶ 8.17 [5] (1974) (footnotes omitted).

> This complaint does contain some general allegations, framed in broad langauge closely paralleling that used in Sections 1983 and 1985(3), that defendants successfully conspired to deprive plaintiff of his rights. But plaintiff was bound to do more than merely state vague and conclusionary allegations respecting the existence of a conspiracy. It was incumbent upon him to allege with at least some degree of particularity overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy. . . . This plaintiff has not done. 327 F.2d at 137 (citations omitted)

Similarly, this Court observed in its recent decision in Koch v. Yunich, 533 F.2d 80 (2d Cir. 1976), in which the dismissal of a complaint was affirmed that:

> Complaints relying on the civil rights statutes are plainly insufficient unless they contain some specific allegations of fact indicating a deprivation of civil rights, rather than state simple conclusions. 533 F.2d at 85.

Accord, National Organization for Women- New York Chapter v. Goodman, 374 F. Supp. 247, 250 (S.D.N.Y. 1974); Israel v. City Rent and Rehabilition Administration of the City of New York, 285 F. Supp. 908 (S.D.N.Y. 1968). See also Morgan v. Sylvester, 125 F. Supp. 380 (S.D.N.Y. 1954), aff'd mem., 220 F.2d 758 (2d Cir.), cert. denied, 350 U.S. 867, rehearing denied, 350 U.S. 919 (1955) (Defendants' motion for summary judgment granted in the context of pro se pleadings strikingly similar to Mr. Calhoun's).

To similar effect as Powell is Avins v. Mangum, 450 F.2d 932 (2d Cir. 1971). There, in an action brought by a plaintiff alleging deprivation of constitutional rights, this Court affirmed the granting to defendants of summary relief where plaintiff:

> failed to present [the constitutional] issue because his complaint . . . is wholly conclusory and alleges no facts on which the court could find that the refusal of employment was . . . solely based on his political beliefs. In this repsect the complaint fails to state a claim on which relief can be granted and must therefore be dismissed as insufficient in law. 450 F.2d at 933.

This rule, that a complaint is insufficient where it merely alleges conclusory allegations as to a conspiracy to deny certain civil rights, has seen expression in a number of subsequent rulings in this circuit. See LaRouche v. City of New York, 369 F. Supp. 565 (S.D.N.Y. 1974). Colon v. State of New York, Division of Human Rights, 354 F. Supp. 343 (S.D.N.Y. 1973), aff'd, 498 F.2d 1396 (2d Cir. 1974); Meyer v. State of New York, 344 F. Supp. 1377 (S.D.N.Y. 1971), aff'd mem., 463 F.2d 424 (2d Cir. 1972); Stambler v. Dillon, 302 F. Supp. 1250 (S.D.N.Y. 1969); See also Black v. Board of Education of Amityville, New York, 31 F.R.D. 44, 46 (E.D.N.Y. 1962) (In discussing the purpose of pleadings under the federal rules, the court stated that "[T]he pleading must still state a right of action and not a mere grievance. Sufficient detail must be furnished to

the court and the adverse party so as to afford a fair conception of the plaintiff's claim and the legal basis for recovery.").

This principle has also seen similar forceful expression outside of the Second Circuit. In McCleneghan v. Union Stock Yards Co. of Omaha, 298 F.2d 659 (8th Cir. 1962), then Judge Blackmun stated that "a general allegation of conspiracy, without a statement of the facts constituting that conspiracy, is only an allegation of a legal conclusion and is insufficient to constitute a cause of action." 298 F.2d at 663 (citations omitted). See also Taylor v. Nichols, 409 F. Supp. 927 (D. Kan. 1976):

> [T]he allegations of the complaint appear to be both highly conclusory and devoid of factual support. A plaintiff in a civil rights action is required to set forth alleged misconduct and resultant harm in a way which will permit an informed ruling whether the wrong complained of is of federal cognizance. 409 F. Supp. at 934.

CONCLUSION

The Order of the District Court dismissing the Complaint should be affirmed.

Respectfully submitted,

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
Defendant-Appellee Pro Se
919 Third Avenue
New York, New York 10022
Tel. No.: (212) 371-6000

William P. Frank
Robert E. Zimet

Of Counsel

ADDENDUM A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT CALHOUN, JR.,

Plaintiff,

-against-

H. SPENCER KUPPERMAN, ESQ., et al.,

Defendants.

OPINION AND ORDER

75 Civ. 3748

#43384

APPEARANCES

ROBERT CALHOUN, JR.,
Pro Se, Plaintiff

H. SPENCER KUPPERMAN,
Pro se, Defendant

CRAVATH, SWAINE & MOORE
Pro Se, Defendants

THACHER, PROFITT, PRIZER, CRAWLEY & WOOD
Pro Se, Defendants

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
Pro Se, Defendants and for
Defendants MICHAEL H. DIAMOND, HENRY P. BAER,
J. PHILLIP ADAMS, PEGGY L. KERR

FREEMAN, MEADE, WASSERMAN & SHARFMAN
Pro Se, Defendants

DUFFY, THOMAS DUFFY, D.J.

This is an action brought under 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202, the Civil Rights Act of 1964 and

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the Fourteenth Amendment. Robert Calhoun, Jr., the sole plaintiff in this action, is the husband of Alice M. Calhoun. Mrs. Calhoun had previously brought an action against Riverside Research Institute ("Riverside") and Columbia University ("Columbia") alleging discrimination based on race in the defendants' failure to promote her to the post of assistant manager of the "AMRAD Data Reduction group" at its Electronics Research Laboratories. Calhoun v. Riverside Research Institute, 71 Civ. 2734 (S.D.N.Y.). Defendants in the action before me are the attorneys and law firms who represented Mrs. Calhoun, Riverside and Columbia at various stages of that litigation.

At some point in the earlier suit, Columbia was discontinued as a defendant. The claim against Riverside resulted in a "disputed settlement agreement" of $3,000 to cover Mrs. Calhoun's out of pocket litigation expenses. Attorneys' fees were not included in this figure since counsel for Mrs. Calhoun had undertaken the case on a pro bono basis.

The "disputed settlement" was successfully challenged by Mrs. Calhoun at a hearing before Judge Knapp. The Judge expressed a willingness to act as a catalyst to bring the parties together on a new agreement:

MRS. CALHOUN: Your Honor Mr. Calhoun is criticizing me for negotiating a settlement --

THE COURT: Mr. Calhoun is not attacking anybody. Mr. Calhoun is expressing his wishes. My point is, Mr. Calhoun, we are all here, we are all present, and why don't we try to settle it right now?

MR. CALHOUN: Right.

THE COURT: So let us not worry about who did what in the past.

Following a discussion off the record, a settlement figure of $5,900 was agreed upon. The agreement was placed on the record:

THE COURT: I take it you represent that this settlement takes into account any claims you have against Riverside Research Institute?

MRS. CALHOUN: Yes, I am under the impression that once you have settled, there is no recourse.

THE COURT: You represent to me that you have no claims of any sort against Riverside Research or anybody there?

MRS. CALHOUN: Yes.

THE COURT: That is not taken care of by this settlement?

MRS. CALHOUN: I do.

Mr. Calhoun now alleges that the defendants conspired in the earlier litigation to do harm to him and his wife by causing "his wife to lose the damages that were warranted in her action." It is the general rule that an individual cannot sue for the deprivation of another's civil rights. McGowan v. Maryland, 366 U.S. 420, 429 (1961); Evain v. Conlisk, 364 F.Supp. 1188 (N.D.Ill.), aff'd, 498 F.2d 1403 (7th Cir. 1974). Only Mrs. Calhoun is in a position to raise any wrongs done to her. The statement that Mr. Calhoun was in turn harmed does not cure this defect.

Since plaintiff lacks standin the complaint fails to state a claim upon which relief can be granted. The action, therefore, must be dismissed as to 'l defendants. Plaintiff's motions for summary judgment and other relief are thus mooted.

SO ORDERED.

U. S. D. J.

Dated: New York, New York
November / , 1975.

ADDENDUM B

ADDENDUM B

18 U.S.C. §§ 241, 242

§ 241. Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

§ 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

28 U.S.C. § 1443

§ 1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

42 U.S.C. § 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Civil Rights Act of 1964

42 U.S.C. §§ 1971, 1975(a)-(d), 2000(a)-(h)

§ 1971. Voting rights—Race, color, or previous condition not to affect right to vote; uniform standards for voting qualification; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(a)(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall--

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to sections 1974 to 1974e of this title: *Provided, however,* That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically

handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

(3) For purposes of this subsection—

(A) the term "vote" shall have the same meaning as in subsection (e) of this section;

(B) the phrase "literacy test" includes any test of the ability to read, write, understand, or interpret any matter.

Intimidation, threats, or coercion

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

Preventive relief; injunction; rebuttable literacy presumption; liability of United States for costs; State as party defendant

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

Jurisdiction; exhaustion of other remedies

(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

Order qualifying person to vote; application; hearing; voting referees; transmittal of report and order; certificate of qualification; definitions

(e) In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared qualified to vote to vote at an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by Revised Statutes, section

1757; to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statement, or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding or other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons

appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: *Provided, however*, That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in the subsection, the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words "affected area" shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this section; and the words "qualified under State law" shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) of this section in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

Contempt; assignment of counsel; witnesses

(f) Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

Three-judge district court: hearing, determination, expedition of action, review by Supreme Court; single-judge district court: hearing, determination, expedition of action

(g) In any proceeding instituted by the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern or practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In any proceeding brought under subsection (c) of this section to enforce subsection (b) of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or, in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

§ 1975a. Rules of procedure—Publication in Federal Register of date, place and subject of hearing; opening statement

(a) At least thirty days prior to the commencement of any hearing, the Commission shall cause to be published in the Federal Register notice of the date on which such hearing is to commence, the place at which it is to be held and the subject of the hearing. The Chairman, or one designated by him to act as Chairman at a hearing of the Commission, shall announce in an opening statement the subject of the hearing.

Copy of rules

(b) A copy of the Commission's rules shall be made available to any witness before the Commission, and a witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the Commission's rules at the time of service of the subpena.

Representation, examination, objections, and argument by counsel; dispatch of hearings; convenience and necessity of witnesses

(c) Any person compelled to appear in person before the Commission shall be accorded the right to be accompanied and advised by counsel, who shall have the right to subject his client to reasonable examination, and to make objections on the record and to argue briefly the basis for such objections. The Commission shall proceed with reasonable dispatch to conclude any hearing in which it is engaged. Due regard shall be had for the convenience and necessity of witnesses.

Censure and exclusion for breaches of order and decorum

(d) The Chairman or Acting Chairman may punish breaches of order and decorum by censure and exclusion from the hearings.

Defamatory, degrading, or incriminating evidence or report

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony. In the event the Commission determines to release or use such evi-

dence or testimony in such manner as to reveal publicly the identity of the person defamed, degraded, or incriminated, such evidence or testimony, prior to such public release or use, shall be given at a public session, and the Commission shall afford such person an opportunity to appear as a voluntary witness or to file a sworn statement in his behalf and to submit brief and pertinent sworn statements of others. The Commission shall receive and dispose of requests from such person to subpena additional witnesses. If a report of the Commission tends to defame, degrade or incriminate any person, then the report shall be delivered to such person thirty days before the report shall be made public in order that such person may make a timely answer to the report. Each person so defamed, degraded or incriminated in such report may file with the Commission a verified answer to the report not later than twenty days after service of the report upon him. Upon a showing of good cause, the Commission may grant the person an extension of time within which to file such answer. Each answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report. Such answer shall be published as an appendix to the report. The right to answer within these time limitations and to have the answer annexed to the Commission report shall be limited only by the Commission's power to except from the answer such matter as it determines has been inserted scandalously, prejudiciously or unnecessarily.

Requests for additional witnesses

(f) Except as provided in this section and section 1975d(f) of this title, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

Release of evidence taken in executive session

(g) No evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

Submission of written statements

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission shall determine the pertinency of testimony and evidence adduced at its hearings.

Transcripts

(i) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that a witness in a hearing held in ex-

ecutive session may for good cause be limited to inspection of the official transcript of his testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof. An accurate transcript shall be made of the testimony of all witnesses at all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof.

Witness fees

(j) A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

Restriction on issuance of subpena

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpenas for the attendance and testimony of witnesses and the production of written or other matter at a hearing held within fifty miles of the place where the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

Publication in Federal Register of organization statement, procedure, and rules

(*l*) The Commission shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including the established places at which, and methods whereby, the public may secure information or make requests; (2) statements of the general course and method by which its functions are channeled and determined, and (3) rules adopted as authorized by law. No person shall in any manner be subject to or required to resort to rules, organization, or procedure not so published.

§ 2000a. Prohibition against discrimination or segregation in places of public accommodation--Equal access

(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

Establishments affecting interstate commerce or supported in their activities by State action as places of public accommodation; lodgings; facilities principally engaged in selling food for consumption on the premises; gasoline stations; places of exhibition or entertainment; other covered establishments

(b) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physi-

cally located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

Operations affecting commerce; criteria; "commerce" defined

(c) The operations of an establishment affect commerce within the meaning of this subchapter if (1) it is one of the establishments described in paragraph (1) of subsection (b) of this section; (2) in the case of an establishment described in paragraph (2) of subsection (b) of this section, it serves or offers to serve interstate travelers or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b) of this section, it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b) of this section, it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

Support by State action

(d) Discrimination or segregation by an establishment is supported by State action within the meaning of this subchapter if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

Private establishments

(e) The provisions of this subchapter shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b) of this section.

§ 2000a-1. Prohibition against discrimination or segregation required by any law, statute, ordinance, regulation, rule or order of a State or State agency

All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

§ 2000a-2. Prohibition against deprivation of, interference with, and punishment for exercising rights and privileges secured by section 2000a or 2000a-1 of this title

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by section 2000a or 2000a-1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a-1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a-1 of this title.

§ 2000a-3. Civil actions for preventive relief—Persons aggrieved; intervention by Attorney General; legal representation; commencement of action without payment of fees, costs, or security

(a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2000a–2 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

Attorney's fees; liability of United States for costs

(b) In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

State or local enforcement proceedings; notification of State or local authority; stay of Federal proceedings

(c) In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) of this section before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

References to Community Relations Service to obtain voluntary compliance; duration of reference; extension of period

(d) In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a) of this section: *Provided*, That the court may refer the matter to the Community Relations Service established by subchapter VIII of this chapter for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: *Provided further*, That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

§ 2000a-4. Community Relations Service; investigations and hearings; executive session; release of testimony; duty to bring about voluntary settlements

The Service is authorized to make a full investigation of any complaint referred to it by the court under section 2000a-3(d) of this title and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

§ 2000a-5. Civil actions by the Attorney General—Complaint

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistence to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

Three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court: single judge district court: hearing, determination, expedition of action

(b) In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

§ 2000a-6. Jurisdiction; exhaustion of other remedies; exclusiveness of remedies; assertion of rights based on other Federal or State laws and pursuit of remedies for enforcement of such rights

(a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subchapter and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

§ 2000b. Civil actions by the Attorney General—Complaint; certification; institution of civil action; relief requested; jurisdiction; impleading additional parties as defendants

(a) Whenever the Attorney General receives a complaint in writting signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 2000c of this title, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

Persons unable to initiate and maintain legal proceedings

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

§ 2000b-1. Liability of United States for costs and attorney's fee

In any action or proceeding under this subchapter the United States shall be liable for costs, including a reasonable attorney's fee, the same as a private person.

§ 2000b-2. Personal suits for relief against discrimination in public facilities

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this subchapter.

§ 2000b-3. "Complaint" defined

A complaint as used in this subchapter is a writing or document within the meaning of section 1001, Title 18.

Pub.L. 88-352, Title III, § 304, July 2, 1964, 78 Stat. 246.

§ 2000c. Definitions

As used in this subchapter—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

§ 2000c-1. Survey and report of educational opportunities

§ 2000c-2. Technical assistance in preparation, adoption, and implementation of plans for desegregation of public schools

The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

§ 2000c-3. Training institutes; stipends; travel allowances

The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute on a full-time basis may be paid stipends for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for travel to attend such institute.

§ 2000c-4. Grants for inservice training in dealing with and for employment of specialists to advise in problems incident to desegregation; factors for consideration in making grants and fixing amounts, terms, and conditions

(a) The Commissioner is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

§ 2000c-5. Payments; adjustments; advances or reimbursement; installments

Payments pursuant to a grant or contract under this subchapter may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine.

§ 2000c-6. **Civil actions by the Attorney General—Complaint; certification; notice to school board or college authority; institution of civil action; relief requested; jurisdiction; transportation of pupils to achieve racial balance; judicial power to insure compliance with constitutional standards; impleading additional parties as defendants**

(a) Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

Persons unable to initiate and maintain legal proceedings

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

"Parent" and "complaint" defined

(c) The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, Title 18.

§ 2000c—7. Liability of United States for costs

In any action or proceeding under this subchapter the United States shall be liable for costs the same as a private person.

§ 2000c-8. Personal suits for relief against discrimination in public education

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

§ 2000c-9. Classification and assignment

Nothing in this subchapter shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

§ 2000d–2. Judicial review; Administrative Procedure Act

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 1009 of Title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

§ 2000d–5. Prohibited deferral of action on applications by local educational agencies seeking federal funds for alleged noncompliance with Civil Rights Act

The Commissioner of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965, by the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress), or by the Cooperative Research Act, on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d–1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Commissioner, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

§ 2000d–6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies—Declaration of uniform policy

(a) It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 and section 182 of the Elementary and Secondary Education Amendments of 1966 dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

Nature of uniformity

(b) Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

(c) Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally-assisted programs and activities as required by title VI of the Civil Rights Act of 1964.

Additional funds

(d) It is the sense of the Congress that the Department of Justice and the Department of Health, Education, and Welfare should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

§ 2000e. Definitions

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of

such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivi-

sion of any ate by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Managment Reporting and Disclosure Act of 1959, and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

§ 2000e-1. Subchapter not applicable to employment of aliens outside State and individuals for performance of activities of religious corporations, associations, educational institutions, or societies

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

§ 2000e-2. Unlawful employment practices—Employer practices

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Employment agency practices

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

Labor organization practices

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Training programs

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

(e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or

refer for employment any individual for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational instutition or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

Members of Communist Party or Communist-action or Communist-front organizations

(f) As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-managment committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

National security

(g) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.

Businesses or enterprises extending preferential treatment to Indians

(i) Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

Preferential treatment not to be granted on account of existing number or percentage imbalance

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

§ 2000e-3. Other unlawful employment practices—Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

§ 2000e-4. Equal Employment Opportunity Commission —Creation; composition; political representation; appointment; term; vacancies. Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

(a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of title 5, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of Title 5.

General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

Exercise of powers during vacancy; quorum

(c) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

Seal; judicial notice

(d) The Commission shall have an official seal which shall be judicially noticed.

Reports to Congress and the President

(e) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

Principal and other offices

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

Powers of Commission

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e–5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

Cooperation with other departments and agencies in performance of educational or promotional activities

(h) The Commission shall, in any of its educational or promotional activities cooperate with other departments and agencies in the performance of such educational and promotional activities.

Personnel subject to section 1181 of Title 5

(i) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 1181 of Title 5, notwithstanding any exemption contained in such section.

§ 2000e—4. Equal Employment Opportunity Commission

[See main volume for text of (a) to (d)]

Reports to Congress and the President

(e) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

§ 2000e-5. Enforcement provisions—Power of Commission to prevent unlawful employment practices

(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent")

within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (b) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such state-

ment is sent by registered mail to the appropriate State or local authority.

Same; notification of State or local authority; time for action on charges by Commission

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commis-

sion has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief

pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment

agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

Provisions of sections 101 to 115 of Title 29 not applicable to civil actions for prevention of unlawful practices

(h) The provisions of sections 101 to 115 of Title 29 shall not apply with respect to civil actions brought under this section.

Proceedings by Commission to compel compliance with judicial orders

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

Appeals

(j) Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

Attorney's fee; liability of Commission and United States for costs

(k) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

§ 2000e-6. Civil actions by the Attorney General—Complaint

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

Jurisdiction; three-judge district court for cases of general public importance; hearing, determination, expedition of action, review by Supreme Court; single-judge district court; hearing, determination, expedition of action

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

(c) Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unex-

pended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

(e) Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title.

§ 2000e-7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

§ 2000e-8. Investigations—Examination and copying of evidence related to unlawful employment practices

(a) In connection with any investigation of a charge filed under section 2000e-5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

(c) Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment

agency, labor organization, or joint labor-management co... which believes that the application to it of any regulation or ord r issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

Prohibited disclosures; penalties

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

§ 2000e-9. Conduct of hearings and investigations pursuant to section 161 of Title 29

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 shall apply.

§ 2000e-10. Posting of notices; penalties

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

§ 2000e-11. Veterans' special rights or preference

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

§ 2000e-12. Regulations; conformity of regulations with Administrative Procedure Act; reliance on interpretations and instructions of Commission

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

§ 2000e-13. Application to personnel of Commission of sections 111 and 1114 of Title 18; punishment for violation of section 1114 of Title 18

The provisions of sections 111 and 1114, Title 18, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of Title 18, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

§ 2000e-14. Equal Employment Opportunity Coordinating Council; establishment; composition; duties; report to President and Congress

There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

§ 2000e-15. Presidential conferences; acquaintance of leadership with provisions for employment rights and obligations; plans for fair administration; membership

The President shall, as soon as feasible after July 2, 1964, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

§ 2000e-16. Employment by Federal Government—Discriminatory practices prohibited; employees or applicants for employment subject to coverage

(a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies (other than the General Accounting Office) as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Post-

al Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

Civil Service Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit an order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for

the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

Section 2000e-5(f) through (k) of this title applicable to civil actions

(d) The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder.

Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

§ 2000e-17. Procedure for denial, withholding, termination, or suspension of Government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of Title 5, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

§ 2000f. Survey for compilation of registration and voting statistics; geographical areas; scope; application of census provisions; voluntary disclosure; advising of right not to furnish information

The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, only include a count of persons of voting age by race, color, and national origin, and determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe. The provisions of section 9 and chapter 7 of Title 13 shall apply to any survey, collection, or compilation of registration and voting statistics carried out under this subchapter: *Provided, however*, That no person shall be compelled to disclose his race, color, national origin, or questioned about his political party affiliation, how he voted, or the reasons therefore, nor shall any penalty be imposed for his failure or refusal to make such disclosure. Every person interrogated orally, by written survey or questionnaire or by any other means with respect to such information shall be fully advised with respect to his right to fail or refuse to furnish such information.

§ 2000g. Establishment of Service; Director of Service: appointment, term; personnel; experts and consultants

There is hereby established in and as a part of the Department of Commerce a Community Relations Service (hereinafter referred to as the "Service"), which shall be headed by a Director who shall be appointed by the President with the advice and consent of the Senate for a term of four years. The Director is authorized to appoint, subject to the civil service laws and regulations, such other personnel as may be necessary to enable the Service to carry out its functions and duties, and to fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of Title 5. The Director is further authorized to procure services as authorized by section 55a of Title 5, but at rates for individuals not in excess of $75 per diem.

§ 2000g-1. Functions of Service

It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce. The Service may offer its services in cases of such disputes, disagreements, or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate State or local official or other interested person.

§ 2000g-2. Cooperation with other agencies; conciliation assistance in confidence and without publicity; information as confidential; restriction on performance of investigative or prosecuting functions; violations and penalties

(a) The Service shall, whenever possible, in performing its functions, seek and utilize the cooperation of appropriate State or local, public, or private agencies.

(b) The activities of all officers and employees of the Service in providing conciliation assistance shall be conducted in confidence and without publicity, and the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service. Any officer or other employee of the Service, who shall make public in any manner whatever any information in violation of this subsection, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than one year.

§ 2000g-3. Reports to Congress

Subject to the provisions of sections 2000a-4 and 2000g-2(b) of this title, the Director shall, on or before January 31 of each year, submit to the Congress a report of the activities of the Service during the preceding fiscal year.

§ 2000h. Criminal contempt proceedings: trial by jury, criminal practice, penalties, exceptions, intent; civil contempt proceedings

In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court. No person shall be convicted of criminal contempt hereunder unless the act or omission constituting such contempt shall have been intentional, as required in other cases of criminal contempt.

Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

§ 2000h-1. Double jeopardy; specific crimes and criminal contempts

No person should be put twice in jeopardy under the laws of the United States for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime under the laws of the United States based upon the same act or omission.

§ 2000h-2. Intervention by Attorney General; denial of equal protection on account of race, color, religion, sex or national origin

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

§ 2000h-3. Construction of provisions not to affect authority of Attorney General, etc., to institute or intervene in actions or proceedings

Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

§ 2000h-4. Construction of provisions not to exclude operation of State laws and not to invalidate consistent State laws

Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

§ 2000h-5. Appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

§ 2000h-6. Separability of provisions

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

Fed. R. Civ. P. 12

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

(a) When Presented. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, except when service is made under Rule 4(e) and a different time is prescribed in the order of court under the statute of the United States or in the statute or rule of court of the state. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods to time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)–(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) **Consolidation of Defenses in Motion.** A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h) (2) hereof on any of the grounds there stated.

(h) **Waiver or Preservation of Certain Defenses.**

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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ROBERT CALHOUN, JR.,

Plaintiff-Appellant,

-against-

H. SPENCER KUPPERMAN ESQ., CRAVATH, SWAINE & MOORE, it agents and others; THACHER, PROFFITT, PRIZER, CRAWLEY & WOOD, its agents and others; SKADDEN, ARPS, SLATE, MEAGHER & FLOM, its agents, Micha H. Diamond, Henry P. Baer, J. Phill Adams, Peggy L. Kerr, and others; and FREEMAN, MEADE, WASSERMAN & SHARFMAN, its agents and others,

Defendants-Appellees.

AFFIDAVIT OF SERVICE BY MAIL

75-7682
(Duffy, J.)

- x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

FAY DONG, being duly sworn, deposes and says:

1. That she is not a party to the action, is over twenty-one years of age and resides at 1170 Ocean Avenue, Brooklyn, New York.

2. That on the 16th day of August, 1976, deponent mailed two copies of the Brief for Defendant-Appellee Skadden, Arps, Slate, Meagher & Flom to:

ROBERT CALHOUN
111-11 132nd Street
Jamaica, New York 11420

CRAVATH, SWAINE, & MOORE
1 Chase Manhattan Plaza
New York, New York 10005

THACHER, PROFFITT, & WOOD
40 Wall Street
New York, New York 10005

FREEMAN, MEADE, WASSERMAN, SHARFMAN
& SCHNEIDER
551 Fifth Avenue
New York, New York 10017

H. SPENCER KUPPERMAN
189 Montague Street
Brooklyn, New York 11201

at the addresses designated by said attorneys for that purpose, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York which is located at 919 Third Avenue, New York, New York 10022.

Fay Dong
FAY DONG

Sworn to before me this
16th day of August, 1976.

Fred A. Manfredonia
Notary Public

FRED A. MANFREDONIA
Notary Public, State of New York
No. 60-4513012
Qualified in Westchester County
Certificate Filed in New York County
Commission Expires March 30, 1977

75-7682
(Duffy, J.)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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ROBERT CALHOUN, JR.,

Plaintiff-Appellant,

-against-

H. SPENCER KUPPERMAN ESQ., CRAVATH, SWAINE & MOORE, its agents and others; THACHER, PROFFITT, PRIZER, CRAWLEY & WOOD, its agents and others; SKADDEN, ARPS, SLATE, MEAGHER & FLOM, its agents, Michael H. Diamond, Henry P. Baer, J. Phillip Adams, Perry L. Kerr, and others; and FREEMAN, MEADE, WASSERMAN & SHAFFER, its agents and others.

Defendants-Appellees.

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AFFIDAVIT OF SERVICE
BY MAIL

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
Defendant-Appellee Pro se
Office and P.O. Address
919 Third Avenue
New York, New York 10022
(212) 371-6000

Of Counsel:
William P. Frank
Robert E. Zimet